Nos. 23-16026, 23-16030 (consol.)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HELEN DOE, *parent and next friend of Jane Doe*; JAMES DOE, *parent and next friend of Jane Doe*; KATE ROE, *parent and next friend of Megan Roe*; ROBERT ROE, *parent and next friend of Megan Roe,*
Plaintiffs-Appellees,

v.

THOMAS C. HORNE, *in his official capacity as State Superintendent of Public Instruction*; LAURA TOENJES, *in her official capacity as Superintendent of the Kyrene School District*; KYRENE SCHOOL DISTRICT; GREGORY SCHOOL; ARIZONA INTERSCHOLASTIC ASSOCIATION INCORPORATED,
Defendants,

and

WARREN PETERSEN, *Senator, President of the Arizona State Senate*; BEN TOMA, *Representative, Speaker of the Arizona House of Representatives*,
Intervenors-Defendants-Appellants.

On Appeal from the United States District Court
District of Arizona (Tucson Division)
Case No. 4:23-cv-00185-JGZ
Hon. Jennifer G. Zipps, District Judge

BRIEF OF *AMICI CURIAE* AMERICAN MEDICAL ASSOCIATION AND SEVEN OTHER HEALTH CARE ORGANIZATIONS IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

[caption continued on next page]

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), the undersigned counsel certifies that none of the Amici Curiae are nongovernmental entities with a parent corporation or a publicly held corporation that owns 10% or more of its stock.

/s/ Jessica Ring Amunson
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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

Amici curiae are eight leading medical, mental health, and other health care organizations. Collectively, *Amici* represent hundreds of thousands of physicians and mental-health professionals, including specialists in family medicine, internal medicine, pediatrics, women's health, and transgender health.

The American Academy of Pediatrics ("AAP") represents 67,000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults. In its dedication to the health of all children, the AAP strives to improve health care access and eliminate disparities for children and teenagers who identify as lesbian, gay, bisexual, transgender, or for those questioning their sexual or gender identity.

The Arizona Chapter of the American Academy of Pediatrics ("AzAAP") is Arizona's leading professional pediatric organization dedicated to promoting the physical, mental and social health and well-being of every Arizona child. Representing more than 1,100 health care professionals including pediatricians,

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[1] This brief is filed with the consent of all parties. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici curiae* certify that this brief was authored entirely by counsel for *amici curiae* and not by counsel for any party, in whole or part; no party or counsel for any party contributed money to fund preparing or submitting this brief; and apart from *amici curiae* and their counsel, no other person contributed money to fund preparing or submitting this brief.

nurses, dentists, psychiatrists, hospital administrators and other allied health practitioners, AzAAP aspires to the highest standards in providing the latest evidence-based and current recommended guidelines to its members. AzAAP also works year-round to educate and engage lawmakers, parents, school professionals, community caregivers and all who impact the lives of children with the goal of fostering a statewide focus on promoting child health preventive care and wellness.

The American Psychiatric Association ("APA"), with more than 38,000 members, is the nation's leading organization of physicians who specialize in psychiatry. Its member physicians work to ensure high quality care and effective treatment for all persons with mental health disorders. It is the position of the APA that discrimination, including against those with gender dysphoria, has negative mental health consequences. The APA opposes all public and private discrimination against transgender and gender-diverse individuals, including in health care.

The American Medical Association ("AMA") is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine

and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state.

The Arizona Medical Association ("ArMA") is a voluntary membership organization for all Arizona physicians. It represents the interests of nearly 4,000 physicians, physician assistants, resident physicians, and medical students from all specialties and practice settings. ArMA has become the foremost advocate and resource in Arizona advancing the practice of medicine with a focus on patient care and the communities it serves. ArMA's vision is to make Arizona the best place to practice medicine and receive care. The AMA and ArMA join this brief on their own behalf and as representatives of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

The American Medical Women's Association ("AMWA") is an organization of women physicians, medical students, and other persons dedicated to serving as the unique voice for women's health and the advancement of women in medicine. AMWA's mission is to advance women in medicine, advocate for equity, and ensure excellence in health care. AMWA's vision is a healthier world where women physicians achieve equity in the medical profession and realize their full potential.

GLMA: Health Professionals Advancing LGBTQ+ Equality ("GLMA") is a national organization committed to ensuring health equity for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") individuals and equality for LGBTQ+ health professionals in their work and learning environments. To achieve this mission, GLMA utilizes the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research.

The World Professional Association for Transgender Health ("WPATH") is a non-profit international, multidisciplinary, medical professional and educational organization with over 4,100 members engaged in clinical and academic research to develop evidence-based medicine and promote high quality care for transgender and gender-diverse ("TGD") individuals in the United States and internationally. One of the main functions of WPATH is to promote the highest standards of healthcare for TGD people through its Standards of Care. The Standards of Care was initially developed in 1979, and the latest version, Version 8, was published in September 2022 and is publicly available at www.wpath.org. Version 8 is based on the best available science and expert professional consensus in transgender health.

All *Amici* share a commitment to improving the physical and mental health of everyone—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public-health consequences of laws and policies that impact LGBTQ+ individuals. *Amici* submit this brief to

inform the Court of the medical consensus regarding what it means to be transgender; the protocols for the treatment of gender dysphoria, which include living in accordance with one's gender identity in all aspects of life; and the predictable harms to the health and well-being of transgender student athletes who are excluded from participating in school sports consistent with their gender identity.

SUMMARY OF ARGUMENT

Transgender individuals have a gender identity that is incongruent with the sex they were assigned at birth. The health care community's understanding of what it means to be transgender has advanced greatly over the past century. It is now understood that being transgender implies no impairment in a person's judgment, or general social or vocational capabilities.

Many transgender individuals experience a condition called gender dysphoria, which is characterized by clinically significant distress resulting from the incongruence between one's gender identity and the sex assigned to the individual at birth. In Arizona, approximately 1.54% or 7,300 youth between the ages of thirteen and seventeen identify as transgender. Jody L. Herman et al., The Williams Institute, *How Many Adults and Youth Identify as Transgender in the United States?* 9 tbl.4 (June 2022), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf. The medical consensus regarding treatment for gender dysphoria is to assist the patient to live in accordance with the

patient's gender identity, thus alleviating the distress or impairment that not living in accordance with one's gender identity can cause. Treatment can include any or all of the following: counseling, social transition (through, *e.g.*, use of a new name and pronouns, new clothes and grooming in order to allow the person to conform to social expectations and norms associated with his or her gender identity), hormone therapy, and/or gender-confirming surgeries. These treatments for gender dysphoria are highly effective in reducing or eliminating the incongruence and associated distress between a person's gender identity and assigned sex at birth.

Without the appropriate treatment for gender dysphoria, transgender individuals face increased rates of negative mental health outcomes, substance use, and suicide. Disruption of or denying this treatment through exclusionary laws also exacerbates and reinforces the real and perceived stigma experienced by transgender individuals, particularly transgender youth. The fear of facing such discrimination can prompt transgender students to hide their gender identity, directly thwarting accepted treatment protocols and creating a vicious cycle with serious negative consequences for individuals with gender dysphoria.

Banning transgender student athletes from participating in school sports consistent with their gender identity, as required by Arizona Revised Statute § 15-120.02, harms transgender student health in several ways. For transgender girls and women forced by the State to play on a boys' sports team, the statute frustrates the

treatment of gender dysphoria by preventing these student athletes from living openly in accordance with their gender identity. For transgender girls who refuse to compromise their medical treatment by playing on a boys' sports team as mandated by the statute, Arizona denies them the numerous health and developmental benefits of participation in sports activities. For all transgender students, the statute also reinforces the stigma associated with being transgender. Such stigma, combined with the denial of appropriate treatment for gender dysphoria, leads to psychological distress and its attendant mental-health consequences.

ARGUMENT

I. What It Means To Be Transgender And To Experience Gender Dysphoria.

Most people have a "gender identity"—a "deeply felt, inherent sense" of their gender. Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 834, 862 (2015), https://www.apa.org/practice/guidelines/transgender.pdf [hereinafter "Am. Psych. Ass'n *Guidelines*"]; *see also* Jason Rafferty, Am. Acad. of Pediatrics, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 Pediatrics at 2 https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for (reaffirmed 2023) [hereinafter "AAP *Policy*

Statement"]. Transgender individuals have a gender identity that is not aligned with the sex assigned to them at birth.[2] Transgender people differ from cisgender (*i.e.*, non-transgender) individuals, whose gender identity aligns with the sex they were assigned at birth. Am. Psych. Ass'n *Guidelines*, *supra*, at 861, 863. A transgender man or boy is an individual who is assigned the sex of female at birth but identifies as male and transitions to live in accordance with that male identity. *See id*. at 863. A transgender woman or girl is an individual who is assigned the sex of male at birth but identifies as female and transitions to live in accordance with that female identity. *See id*. A transgender boy is a boy. A transgender girl is a girl. Gender identity is distinct from and does not correlate with sexual orientation. Transgender people, like cisgender people, may identify as heterosexual, gay, lesbian, bisexual, or asexual. Am. Psych. Ass'n *Guidelines*, *supra*, at 835-36, 862; *see* National Academies of Sciences, Engineering, Medicine, *Measuring Sex, Gender Identity, and Sexual Orientation* 17-22 (Nancy Bates et al. eds., 2022); Sandy E. James et al., Nat'l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 246 (Dec. 2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf.

[2] Although most people have a gender identity that is male or female, some individuals have a gender identity that is "a blend of male or female[,] or an alternative gender." Am. Psych. Ass'n *Guidelines*, *supra*, at 834.

Currently, over 1.6 million adults and youth in the United States identify as transgender, which is roughly 0.6% of Americans aged thirteen years or older. *See* Jody L. Herman et al., *supra*, at 1. In Arizona, around 1.54% or 7,300 youth between the ages of thirteen and seventeen identify as transgender. *Id.* at 9 tbl.4.

The medical profession's understanding of gender has advanced considerably over the past fifty years. Throughout much of the twentieth century, individuals who did not conform with their gender assigned at birth were often viewed as "perverse or deviant." Am. Psych. Ass'n, *Report of the APA Task Force on Gender Identity and Gender Variance* 26-27 (2009), https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf [hereinafter "Am. Psych. Ass'n *Task Force Report*"]. Medical practices during that time period tried to "correct" this perceived deviance by attempting to force gender non-conforming people, including transgender people, to live in accordance with the sex assigned to them at birth. These efforts failed and caused significant harm to the individuals subjected to them. *Id.*; Substance Abuse and Mental Health Servs. Admin. ("SAMHSA"), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 13, 24-26 (2015), https://store.samhsa.gov/sites/default/files/d7/priv/sma15-4928.pdf [hereinafter "SAMHSA *Ending Conversion Therapy*"]. Much as our professions now recognize that homosexuality is a normal form of human sexuality—and that stigmatizing homosexual people causes significant harm—we now recognize that being

transgender is a "normal variation[] of human identity and expression"—and that stigmatizing transgender people also causes significant harm. *See* Letter from James L. Madara, CEO/Exec. Vice President, Am. Med. Ass'n, to Bill McBride, Exec. Dir., Nat'l Governors Ass'n (Apr. 26, 2021), https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2021-4-26-Bill-McBride-opposing-anti-trans-bills-Final.pdf.

A. Gender Identity

"*Gender identity*" refers to a "person's internal sense" of being male, female, or another gender. Am. Psych. Ass'n, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* 1 (2014), http://www.apa.org/topics/lgbt/transgender.pdf [hereinafter "Am. Psych. Ass'n *Answers*"]. Every person has a gender identity. Carl G. Streed Jr., *Health Communication and Sexual Orientation, Gender Identity, and Expression*, 106 Med. Clinics N. Am. 589 (2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9219031/pdf/nihms-1775881.pdf; Centers for Disease Control and Prevention, *Transgender Persons*, https://www.cdc.gov/lgbthealth/transgender.htm (last reviewed Apr. 17, 2023). Further, gender identity cannot necessarily be ascertained immediately after birth.

See Am. Psych. Ass'n *Guidelines*, *supra*, at 862. Many children develop stability in their gender identity between ages three and four.[3] *Id*. at 841.

"[*G*]*ender expression* refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, or body characteristics." Am. Psych. Ass'n *Answers*, *supra*, at 1. There are many individuals who depart from stereotypical male and female appearances and roles, but who are not transgender. *See* Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, 33 J. Sch. Nursing 1, 6 (2017). By contrast, a transgender boy or a transgender girl "consistently, persistently, and insistently" identifies as a gender different from the sex they were assigned at birth. *See* Colt Meier & Julie Harris, Am. Psych. Ass'n, Fact Sheet: *Gender Diversity and Transgender Identity in Children* at 1, http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf; *see also* Cicero & Wesp, *supra*, at 5-6.

While psychologists, psychiatrists, and neuroscientists have not pinpointed why some people are transgender, research suggests there may be biological or genetic influences, including, for example, exposure of transgender men identified at birth as females to elevated levels of testosterone in the womb. *See, e.g.*, Mostafa

[3] "Although gender identity is usually established in childhood, individuals may become aware that their gender identity is not in full alignment with sex assigned at birth in childhood, adolescence, or adulthood." Am. Psych. Ass'n *Guidelines*, *supra,* at 836.

Sadr et al., *2D:4D Suggests a Role of Prenatal Testosterone in Gender Dysphoria*, 49 Archives Sexual Behav. 421, 427 (2020); C. E. Roselli, *Neurobiology of Gender Identity and Sexual Orientation*, J. Neuroendocrinology (July 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6677266/pdf/nihms-1042560.pdf. Brain scans and neuroanatomical studies of transgender individuals also support the existence of biological explanations. *See, e.g.*, Francine Russo, *Is There Something Unique About the Transgender Brain?*, Sci. Am. (Jan. 1, 2016), https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/.

B. Gender Dysphoria

As noted above, being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Jack Drescher et al., Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* (2018), https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf. However, many transgender individuals are diagnosed with gender dysphoria, a condition that is characterized by clinically significant distress and anxiety resulting from the "incongruence" between an individual's gender identity and birth-assigned sex. Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 451-53 (5th ed. 2013) [hereinafter "*DSM-5*"]. As recognized by the district court in

enjoining Arizona Revised Statute § 15-120.02, gender dysphoria is a "serious medical condition" but is "highly treatable" with medical treatment methods that are "necessary, safe, and effective." Order at 4, *Doe v. Horne*, No. CV-23-00185, __ F. Supp. 3d __, 2023 WL 4661831 (D. Ariz. July 20, 2023), ECF No. 127 ("Prelim. Inj. Order"). As discussed in detail below, the recognized treatment for someone with gender dysphoria is support that addresses "their social, mental, and medical health needs and well-being while respectfully affirming their gender identity." World Professional Association for Transgender Health ("WPATH"), *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, Sept. 2022, at S7, https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644 [hereinafter "WPATH *Standards of Care*"]. These treatments are effective in alleviating gender dysphoria and are medically necessary for many people. *Id.* at S16-S18.

1. The Diagnostic Criteria And Seriousness Of Gender Dysphoria

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition codifies the diagnostic criteria for gender dysphoria in adults as follows: "[a] marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two" out of six criteria, and "clinically significant distress or impairment in social, occupational, or other

important areas of functioning." *DSM-5*, *supra*, at 452-53. The six criteria include: (1) "[a] marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics"; (2) "[a] strong desire to be rid of one's primary and/or secondary sex characteristics"; (3) "[a] strong desire for the primary and/or secondary sex characteristics of the other gender"; (4) "[a] strong desire to be of the other gender (or some alternative gender . . . .)"; (5) "[a] strong desire to be treated" as a gender different from one's assigned gender; and (6) "[a] strong conviction that one has the typical feelings and reactions" of a different gender. *Id.* at 452.

Transgender children often experience intensified gender dysphoria and worsening mental health as the hormonal and anatomical changes associated with puberty cause the body to develop in ways that diverge from the child's gender identity. *See* Am. Psych. Ass'n *Task Force Report, supra*, at 45-46; SAMHSA, *Ending Conversion Therapy*, *supra*, at 2-3. For instance, a deepening voice for male-assigned individuals or the growth of breasts and the beginning of a menstrual cycle for female-assigned individuals can cause severe distress. For some, puberty manifests as "a sudden trauma that forces to consciousness the horror that they are living in a body that is totally at odds with the gender they know themselves to be but which has been kept securely underground." Diane Ehrensaft, *From Gender Identity Disorder to Gender Identity Creativity: True Gender Self Child Therapy*, 59

J. Homosexuality 337, 345 (2012); *see also* Joseph H. Bonifacio et al., *Management of Gender Dysphoria in Adolescents in Primary Care*, 191 Canadian Med. Ass'n J. E65, E72 (2019) ("Many gender-variant youth may experience the physical changes of puberty as traumatic, with further negative consequences for mental health.").

Left untreated, gender dysphoria can cause debilitating distress, depression, impairment of function, self-mutilation to alter one's genitals or secondary sex characteristics, other self-injurious behaviors, and suicide. *See*, *e.g.*, *DSM-5*, *supra*, at 455, 458; Nicolle K. Strand & Nora L. Jones, *Invisibility of "Gender Dysphoria,"* 23 Am. Med. Ass'n J. Ethics 557, 557 (2021) (discussing consequences of untreated gender dysphoria, including "higher rates of suicide and mental illness"). Like other minority groups, transgender individuals are also frequently subjected to prejudice and discrimination in multiple areas of their lives (*e.g.*, school, employment, housing, health care), which exacerbates these negative health outcomes and makes access to appropriate medical care all the more important. Jaclyn M. White Hughto et al., *Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions*, 147 Soc. Sci. Med. 222, 223, 226-27 (Nov. 11, 2015) (discussing the direct and exacerbated health impacts of discrimination and stigma against transgender individuals).

2. The Accepted Treatment Protocols For Gender Dysphoria

In the last few decades, transgender people suffering from gender dysphoria have gained widespread access to gender-affirming medical and mental health support and treatment. Am. Psych. Ass'n *Guidelines*, *supra*, at 832-33, 835. For over thirty years, the generally accepted treatment protocols for gender dysphoria[4] have aimed at alleviating the distress associated with the incongruence between gender identity and birth-assigned sex. Am. Med. Ass'n, Comm. on Human Sexuality, *Human Sexuality* 38 (1972). As the district court explained, "[t]he goal of medical treatment for gender dysphoria is to alleviate a transgender patient's distress by allowing them to live consistently with their gender identity." Prelim. Inj. Order at 5. These protocols are laid out in the *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8* developed by the World Professional Association for Transgender Health ("WPATH"). WPATH *Standards of Care*, *supra*. The major medical and mental health groups in the United States recognize WPATH's *Standards of Care* as representing "the consensus" of the medical and mental health communities regarding the appropriate treatment for gender dysphoria. Am. Psych. Ass'n *Task Force Report*, *supra*, at 32; AAP Policy Statement, *supra*, at 6; Letter from James L. Madara, CEO/Exec. Vice

[4] Earlier versions of the *DSM* used different terminology, *e.g.*, "gender identity disorder," to refer to this condition. Am. Psych. Ass'n *Guidelines*, *supra*, at 861.

President, Am. Med. Ass'n, to Hon. Robert Wilkie, Sec'y, U.S. Dep't Veterans Affs. 2 (Sept. 6, 2018), https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2018-9-6-Letter-to-Wilkie-re-Exclusion-of-Gender-Alterations-from-Medical-Benefits-Package.pdf.

The recommended treatment for gender dysphoria includes assessment, counseling, and, as appropriate, social transition, hormone therapy, and surgical interventions to bring the body into alignment with one's gender identity.[5] Am. Psych. Ass'n *Task Force Report*, *supra*, at 32-39; William Byne et al., Am. Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria, *Assessment and*

[5] Some clinicians still offer versions of "reparative," or "conversion" therapy based on the idea that being transgender is a mental disorder. However, all leading medical professional organizations that have considered the issue have explicitly rejected such treatments. *See* Am. Med. Ass'n, Policy H-160.991, *Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations* 1 (2018), https://policysearch.ama-assn.org/policyfinder/detail/Health%20Care%20Needs%20of%20Lesbian,%20Gay,%20Bisexual,%20Transgender%20and%20Queer%20Populations%20H-160.991?uri=%2FAMADoc%2FHOD.xml-0-805.xml; Am. Sch. Counselor Ass'n, *The School Counselor and LGBTQ+ Youth* (2022), https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-LGBTQ-Youth; Hilary Daniel et al., *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper From the American College of Physicians*, 163 Annals Internal Med. 135, 136 (2015); AAP Policy Statement, *supra*, at 4; *see* Int'l Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2022), https://www.ipa.world/IPA/en/IPA1/Procedural_Code/IPA_POSITION_STATEMENT_ON_ATTEMPTS_TO_CHANGE_SEXUAL_ORIENTATION__GENDER_IDENTITY__OR_GENDER_EXPRESSI.aspx.

Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists, 175 Am. J. Psychiatry 1046 (2018); AAP Policy Statement, *supra*, at 6-7. However, each patient requires an individualized treatment plan that accounts for their specific needs. Am. Psych. Ass'n *Task Force Report*, *supra*, at 32.

Social transition—*i.e.,* living one's life fully in accordance with one's gender identity—is often a critically important part of treatment. This typically includes publicly identifying oneself as that gender through all of the ways that people signal their gender to others such as through their name, pronoun usage, dress, manner and appearance, and social interactions. Leading medical organizations, including the American Academy of Pediatrics, the Endocrine Society, the American Medical Association, the American Psychological Association, and WPATH have published policy statements and guidelines on providing age-appropriate gender affirming care. *See, e.g.*, AAP Policy Statement, *supra*, at 5-6; Am. Psych. Ass'n *Guidelines*, *supra*, at 841-43. Transgender people of all ages benefit from social transition, including children. Socially transitioned transgender youth "largely mirror the mental health" of age-matched "cisgender siblings and peers." WPATH *Standards of Care*, *supra*, at S77. They also tend to report lower rates of anxiety and depression and a better sense of self-worth compared to transgender youth who have not socially transitioned to fit their gender identity. *See* Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 J. Am. Acad. Child

Adolesc. Psychiatry 116 (2017); *see also* WPATH *Standards of Care*, *supra*, at S77-S78. In the realm of school sports, in order for transgender youth to live their lives fully in accordance with their gender identity, they should be able to publicly identify with and compete on teams that correspond to their gender identity.

Ultimately, the goal is for individuals with gender dysphoria to experience "[i]dentity integration," where "being transgender is no longer the most important signifier of one's identity" and the individual can refocus on his or her relationships, school, job, and other life activities. Walter Bockting & Eli Coleman, *Developmental Stages of the Transgender Coming-Out Process: Toward an Integrated Identity*, *in Principles of Transgender Medicine and Surgery* 185, 202-03 (Randi Ettner et al., eds., 2d ed. 2013). For LGBTQIA students allowed to participate in sporting activities that accord with their gender identity, research has found that their psychological well-being is improved, with decreased reports of hopelessness and suicidality, fewer depressive symptoms, and higher self-esteem. *See, e.g.*, Gay, Lesbian & Straight Education Network ("GLSEN"), Issue Brief, *Gender Affirming and Inclusive Athletics Participation*, https://www.glsen.org/sites/default/files/2022-05/GLSEN_Transathlete_Policies_Issue_Brief-04-2022.pdf.

II. Excluding Transgender Youth From Organized Sports Deprives Them Of Numerous Potential Benefits And Endangers Their Health, Safety, And Well-Being.

The Arizona statute at issue in this case bans all transgender female students from participating in school sports consistent with their gender identity. Ariz. Rev. Stat. § 15-120.02. Under the statute, transgender female students can either: (1) not participate in school sports at all, or (2) participate in those sports as cisgender males. *Id.* This ban may lead to severe adverse consequences for the health and well-being of transgender female students. Forcing a transgender female student to participate on a sports team identifying as a cisgender male can exacerbate the harmful effects of gender dysphoria and goes against the medical consensus to treat gender dysphoria by supporting the transgender individual in living her life according to her gender identity. Alternatively, if they refuse to identify as a cisgender male, transgender female students may be forced to forgo student athletics entirely, depriving them of the myriad benefits—including social, physical, and mental-health benefits—that participation in sports provides. Either way, the effect of the Arizona statute is deleterious to the health and well-being of transgender female students.

A. The Exclusion Of Transgender Female Students From School Sports Consistent With Their Gender Identity Exacerbates Gender Dysphoria And Stigma.

For transgender individuals, being treated differently as a result of their transgender identity can cause tremendous pain and harm. *See, e.g.*, Sam Winter et al., *Transgender People: Health at the Margins of Society*, 388 Lancet 390, 394 (2016). The district court correctly states that "[t]ransgender girls will internalize the shame and stigma of being excluded for a personal characteristic (being transgender) over which they have no control and which already subjects them to prejudice and social stigma." Prelim. Inj. Order at 15-16. Exclusionary laws that prevent transgender girls and women from participating in school sports consistent with their gender identity—an important facet of their lives—can disrupt medically appropriate treatment protocols.

As discussed above, the appropriate protocol for treating gender dysphoria includes aligning the body and outward expression with one's gender identity. This is particularly important in school environments, which "play a significant role in the social and emotional development of children" and where "[e]very child has a right to feel safe and respected at school[.]" AAP Policy Statement, *supra*, at 9. Promoting safe, supportive, and affirming school environments reduces the risk of negative health outcomes such as depression and suicidality. *See* Lindsay Kahle Semprevivo, *Protection and Connection: Negating Depression and Suicidality*

Among Bullied, LGBTQ Youth, 20 Int'l J. Env't Rsch. Pub. Health at 1-2 (2023), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10379061/pdf/ijerph-20-06388.pdf.

Bullying, harassment, and abuse experienced by transgender students can result in a greater risk for post-traumatic stress disorder, depression, anxiety, and suicidality. Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 Developmental Psych. 1580, 1580-82 (2010), https://familyproject.sfsu.edu/sites/default/files/documents/FAP_School%20Victimization%20of%20Gender-nonconforming%20LGBT%20Youth.pdf; *see also* Semprevivo, *supra*, at 8-10. As noted above, social transition by transgender youth is a critical part of treating gender dysphoria, and this includes in all types of school activities such as participating on school sports teams that align with their gender identity. WPATH *Standards of Care*, *supra*, at S76. Denying children the ability to fully express their gender identity in schools, as the Arizona statute does, makes it difficult if not impossible for transgender children to live in accordance with their gender identity and thwarts the appropriate medical treatment for these children. Lack of appropriate treatment, in turn, increases the rate of negative health outcomes, substance use, and suicide for transgender children. *See* Jack L. Turban et al., *Pubertal Suppression for*

Transgender Youth and Risk of Suicidal Ideation, 145 Pediatrics 1, 6-7 (2020) (finding a significant inverse association between treatment with pubertal suppression during adolescence and lifetime suicidal ideation among transgender adults who sought out this treatment).

Exclusionary laws can exacerbate the risk of "anxiety and depression, low self-esteem, engaging in self-injurious behaviors, suicide, substance use, homelessness, and eating disorders among other adverse outcomes" that many transgender individuals face. Am. Psych. Ass'n & Nat'l Ass'n of School Psychs., *Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools* (2015), https://www.apa.org/about/policy/orientation-diversity [hereinafter "APA/NASP Resolution"]. Those risks are already all too serious. A 2019 report from the Centers for Disease Control and Prevention found that transgender high school students were more likely than cisgender high school students to report violence victimization, substance use, and suicide risk, with almost thirty-five percent of transgender high school students reporting attempting suicide compared to roughly six percent of cisgender high school students. Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students —19 States and Large Urban School Districts, 2017*, 68 Morbidity &

Mortality Weekly Report 67, 69 tbl.2 (2019), http://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf.

In addition, exclusionary laws perpetuate the perceived stigma of being transgender by forcing transgender individuals to disclose their transgender status, by marking them as "others," and by conveying the State's judgment that they are different and deserve inferior treatment. Research increasingly shows that stigma and discrimination have deleterious health consequences. *See generally* Am. Psych. Ass'n, *Stress in America: The Impact of Discrimination* (2016), https://www.apa.org /news/press/releases/stress/2015/impact-of-discrimination.pdf. These consequences have striking effects on the daily functioning and emotional and physical health of transgender people. *See, e.g.*, Int'l Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra* ("[B]ias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health.").

One study concluded that "living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses." Judith Bradford et al., *Experiences of Transgender-Related Discrimination and Implications for Health: Results From the Virginia Transgender Health Initiative Study,* 103 Am. J. Pub. Health 1820, 1827 (2013), https://www. ncbi.nlm.nih.gov/pmc/articles/PMC3780721/. As both the American Psychological

Association and the National Association of School Psychologists have concluded, "the notable burden of stigma and discrimination affects minority persons' health and well-being and generates health disparities." APA/NASP Resolution, *supra*; *see also* White Hughto et al., *supra*, at 223 (discussing how anti-transgender stigma is "linked to adverse health outcomes including depression, anxiety, suicidality, [and] substance abuse"). There is thus every reason to anticipate that the Arizona statute excluding transgender girls and women from school sports consistent with their gender identity can negatively affect their health.

Finally, exclusionary policies have a particularly deleterious effect on the social and emotional development of children and adolescents. Discrimination against and harassment of children and adolescents in their formative years can have negative effects that linger long after they leave the school environment. Unsurprisingly, unwelcoming school environments produce particularly "poor[] educational outcomes" for transgender individuals. *See* APA/NASP Resolution, *supra*; Jack K. Day et al., *Safe Schools? Transgender Youth's School Experiences and Perceptions of School Climate*, 47 J. Youth and Adolescence 1731 (2018) (finding higher truancy rates, more victimization, lower grades, and negative perceptions of school climate). Poorer educational outcomes, standing alone, can lead to lower lifetime earnings and an increased likelihood of poorer health outcomes later in life. *See, e.g.*, Emily B. Zimmerman et al., *Understanding the Relationship*

Between Education and Health: A Review of the Evidence and an Examination of Community Perspectives in Population Health: Behavioral and Social Science Insights 347 (Robert M. Kaplan et al., eds. 2015), https://www.ahrq.gov/sites/default/files/publications/files/population-health.pdf. Moreover, and as already discussed, exclusionary policies can produce and compound the stigma and discrimination that transgender children and adolescents face in a school environment. Such stigma and discrimination, in turn, are associated with an increased risk of post-traumatic stress disorder, depression, anxiety, and suicidality in subsequent years. Toomey et al., *supra*, at 1580-82; *see also* APA/NASP Resolution, *supra*.

B. Preventing Transgender Female Students From Participating In Organized Sports Denies Them Many Potential Benefits To Their Health And Well-Being.

As the district court correctly recognized, participating in organized school sports can greatly benefit the health and well-being of all students, including transgender female students. Prelim. Inj. Order at 15-16. A 2019 clinical report from the American Academy of Pediatrics concluded that "[o]rganized sports participation can be an important part of overall childhood and adolescent physical, emotional, social, and psychological health." Kelsey Logan et al., *Organized Sports for Children, Preadolescents, and Adolescents*, 143 Pediatrics at 13 (2019), https://publications.aap.org/pediatrics/article/143/6/e20190997/37135/Organized-Sports-for-Children-Preadolescents-and. Participating in organized sports can promote: (1)

the acquisition of critical physical, academic, and life skills, (2) psychosocial development and formation of social identity, (3) improvements in mental health, and (4) higher levels of physical fitness and weight management. *Id.* at 4-8; *see also* Prelim. Inj. Order at 15. Excluding transgender female students from participating in organized sports based on their gender identity deprives them of these myriad potential benefits, which can adversely affect their health and well-being.

Skill acquisition: Participating in organized sports can promote "[f]undamental motor skills," such as "running, leaping, throwing, catching, and kicking," which "are essential for everyday functioning and are important building blocks for higher-level sports skills." Logan et al., *supra*, at 4. In addition, participating in organized sports can increase academic achievement, high school graduation rates, and the likelihood of attending college.[6] *Id*. at 5; *see also* Prelim. Inj. Order at 15. This is especially relevant with regard to transgender students, who reported significantly higher drop-out rates as compared to their cisgender counterparts. *See* GLSEN, *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline Among LGBTQ Youth* 27 & fig.16 (2016), https://www.glsen.org/sites/default/files/2019-11/Educational_Exclusion_2013.pdf

[6] These enhanced academic skills stem in part from the fact that athletes engage in "planning, self-monitoring, evaluation, reflection, and effort," and are "goal oriented and problem focused." These many attributes "carry over into the educational realm." Logan et al., *supra*, at 5.

(finding 7.6% of transgender students said they may drop out of high school, as opposed to 6% of genderqueer students, 2.3% of cisgender female students, and 2.1% of cisgender male students). With regard to life skills—the "skills that are required to deal with the demands and challenges of everyday life"—involvement in organized sports can help to instill self-awareness, emotional control, discipline, personal responsibility, "taking initiative, goal setting, applying effort, respect, teamwork, and leadership." Logan et al., *supra*, at 5.

Social: Organized sports can also provide numerous social benefits, including the development of a positive social self-concept and the opportunity to interact with peers and learn social skills such as "communication, conflict resolution, and empathy." *Id.* at 5-6; *see also* Prelim. Inj. Order at 15. Participation in organized sports can promote "citizenship, social success, positive peer relationships, and leadership skills." Logan et al., *supra*, at 6.

Psychology: Involvement in organized sports can positively affect mental health in children and adolescents, who develop emotional control, self-esteem, confidence, and social integration, and are therefore less likely to experience emotional distress, depression, and suicidal behavior. These benefits can last well into adulthood. *Id.* at 6-7; *see also* Prelim. Inj. Order at 15.

Physical fitness: Organized sports participation can also promote physical fitness in children and adolescents, including cardiovascular health, "endurance,

speed, strength, and coordination," and a lower likelihood of being overweight. Additionally, engaging in organized sports during adolescence increases the likelihood of a physically active lifestyle later in life. Logan et al., *supra*, at 7-8.

In light of all these potential benefits, those who seek to participate in organized sports but are prevented from doing so on the basis of, for example, gender identity, can experience adverse health outcomes. They can be hindered in their acquisition of physical, academic, and life skills, and in their social development. They can also experience lower levels of mental and physical health.

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully urge this Court to affirm the district court's grant of a preliminary injunction.

Date: October 13, 2023

Respectfully submitted,

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